

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 4396/DEL/2019
[Assessment Year: 2010-11]

Anil Kumar Sapra, 1235, Mukharjee Nagar, North West Delhi, New Delhi-110009	<u>Vs</u>	Income-tax Officer, Ward-35(4), New Delhi.
PAN- BIDPS2018A		
APPELLANT		RESPONDENT
Appellant by		Sh. Sumit Chawla, Adv.
Respondent by		Sh. Sanjay Kumar, Sr. DR
Date of hearing		22.02.2022
Date of pronouncement		22.02.2022

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-12, New Delhi, dated 15.03.2019, pertaining to the assessment year 2010-11. The assessee has raised following grounds of appeal:

“1) Appellant is not provided appropriate opportunity of hearing before CIT. As has been said by the appellant he is not liable to file return for the

AY 2010-11 as the assessee being exempted U/s. 44AF, I.T. Act, 1961. His liability to file his return is dispensed thereof.

2) Addresses of the purchasers of the appellant's have been provided thereof as same being complete. In the said order of CIT they have been held to be incomplete. Proof of confirmation of verification of the said addresses has not been provided in the said order of CIT.

3) Opportunity to provide sale against the sale proceeds to various parties has not been provided by CIT.

4) Amount received from sale proceeds were received in odd figures same were held in the order of CIT to be against general practice. As there is no prescribed method with relevant figures is prescribed by any statutory authority. The relevant proceeds could not be said to be against general practice.”

5) Any other Grounds which may be let in at the time of hearing.”

2. The facts, in brief, are that the case of the assessee was reopened u/s 147 of the Income-tax Act, 1961, hereinafter referred to as the “Act”, on the basis that as per the AIR information it revealed that the assessee had deposited cash of Rs. 11,90,330/-. It is recorded by the Assessing officer that in response to the notice dated 31.03.2017, no one appeared and subsequent statutory notices were not complied. Therefore, he treated the entire deposits as income of the assessee and assessed income at Rs. 11,90,330/- vide order dated 29.11.2017. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals), who, after

considering the submissions, dismissed the appeal. Aggrieved, the assessee is in appeal before this Tribunal.

3. The only effective ground in this appeal is against sustaining the addition made by the Assessing Officer of Rs. 11,90,330/-.

4. Learned counsel for the assessee vehemently argued that authorities below were not justified in making the addition. He submitted that the proceedings have been carried out in a mechanical manner without giving sufficient opportunity to the assessee. He further submitted that before the learned CIT(Appeals) the assessee had filed certain additional evidence to prove his case. He submitted that the assessee was not liable for tax as his case falls under section 44AF of the Act and the Revenue itself had computed income u/s 44AF of the Act.

5. On the contrary, learned DR supported the orders of the authorities below and submitted that the assessee did not provide any evidenced to the Assessing Officer and failed to attend the proceedings.

6. I have heard rival submissions, perused the material on record and gone through the orders of the authorities below. It is seen from the records that the Assessing officer has merely stated that a notice was issued on 31.03.2017 at the given address. Further, the learned CIT(Appeals) also did not consider the evidences filed by the assessee. The learned CIT(Appeals) has decided the issue by observing as under:

8. Decision

8.1 Briefly, the facts of the case are that reassessment proceedings in the case of the Assessee were initiated by issuing the notice u/s 148 of the IT Act. The Assessing Officer, in the reasons recorded before issue of the notice u/s 148 of the IT Act, noted that Sh. Anil Kumar Sapra has not filed his ITR for AY 2010-11. As per AIR information he had deposited cash of Rs. 11,90,330/- or more in saving bank account during the year under consideration. The Assessee has offered no explanation regarding the same. Hence, the case was reopened to be assessed u/s 147 of the IT Act. The Assessing Officer obtained necessary approval from the JCIT for issuing the notice u/s 148 of the IT Act. The Assessee did not furnish the return of income in response to notice u/s 148 of the IT Act and subsequent notices u/s 142(1) of the IT Act. The Assessing Officer requisitioned the copy of the bank statement of the account with Punjab National Bank held by the Assessee. On the perusal of the bank statement, cash amounting to Rs. 11,90,330/- was confirmed to have been deposited. The Assessee did not offer any explanation and no compliance with the notices was made, the Assessing Officer assessed the cash deposit of Rs. 11,90,330/- as unexplained cash credit u/s 68 of the IT Act.

8.2 Vide written submission dated 11.06.2018, the Assessee stated that he is a dealer in spare parts. He sold goods to various persons of different states by buying the goods in the wholesale market of Delhi. The return of income tax was not filed as his income was not taxable. Various deposits in the bank account are attributable to monies deposited by shopkeepers of different states. It is submitted that the Assessee is a small supplier and did not maintain current account. Cash deposits amounting to Rs. 11,90,330/- are the sale proceeds realized from the persons of remote areas. If his income u/s 44AF of the IT Act is computed on the cash receipts of Rs. 11,90,330/-, his income would work out to Rs. 59,516/- i.e. @ 5% of the deposits. He could not attend to the assessment proceedings due to mental stage, financial problems and family issues. Most of the time he was out of the Delhi for collecting the receivable.

8.3 In the application under Rule 46A, the Appellant has furnished the copy of the bank statement of his account with State Bank of India for the financial year under consideration. The Appellant has underlined the narration recorded by the bank in respect of cash deposits. It has been submitted that the cash deposits came from 7 parties. However, in an another letter, it has been stated that the cash deposits came from 8

parties. The names & addresses of the parties mentioned by the Appellant are the following :

- 1. M/s Osia Automobiles
Old Agra Road, Malegaon, Maharashtra-4234203*
- 2. M/s Ajay Auto Sales
Near Bus Stand, Ahmednagar, Maharashtra-414001*
- 3. M/s Pooja Auto Agency
Akash Complex, Mumbai Agra Highway, Dhulia (MS)*
- 4. M/s Santosh Auto parts
Mumbai Agra Highway, Dhulia (MS)*
- 5. Shree Mahalaxmi Sales Co.
Bus Stand, Pathalgaon (CG)*
- 6. National Motors
Abdulla Complex, Monbhapara, Raipur (CG)*
- 7. Auto Wheels
II, Lalgyan Apartments, Patva Complex, Monhpara, Raipur
(CG)*
- 8. Jasnoor Motors
Laxman Chain, Monha Road, Aurangabad (MS)*

8.4 The Assessing Officer has firstly objected to the admission of additional evidences and secondly he has stated that the explanation of the Assessee to the effect that money was received from customers of various states during the business of spare parts is inadequate to explain the cash deposits. The addresses of the parties from whom the payments have been claimed are incomplete.

8.5 On careful consideration of the facts of the case, I find that the narration for the cash deposits do not provide sufficient explanation thereto. The Appellant has not furnished any bills for the sale of spare parts. No confirmation has been produced from the said parties. All the deposits are in

wrong figures, which is generally against practice as the bill amounts would always be in odd figures. The Appellant has not given any other proof that he was engaged in the business of spare parts and supplying the goods to different states. Then it is also a possibility that many sale proceeds would have been received by the Assessee directly. These facts and circumstances, lead to the conclusion that the Appellant's explanation is not genuine. Moreover, he failed to discharge his onus to substantiate the explanation offered by him. In the result, the addition is confirmed and ground of appeal taken by the Appellant is dismissed."

7. The contention of the assessee before the authorities below was that the amount deposited in the bank account did not represent the undisclosed income. In fact the assessee was engaged in the business of sale/purchase of spare parts in various parts of India. Against the sale, the assessee received the money from the purchaser and same was deposited in the bank account. There is no dispute with regard to the fact that before the Assessing Authority, there was no representation on behalf of the assessee. It is stated by the learned counsel for the assessee that the assessee did not receive the notice issued by the Assessing Authority. He further stated that before the learned CIT(Appeals) additional evidences were filed in support of the contention. However, the learned CIT(Appeals) did not consider the evidences and dismissed the appeal without giving effective opportunity to the assessee to represent his case. He further reiterated the submissions as made in the written submissions. For the sake of clarity, submissions of the assessee are reproduced as under:

“Submissions:

In the said year that is assessment Year 2010-2011 the assessed is doing same business. However, he could not reply to the various notices as issued by AO because of financial and other personal problems and ex-parte order is passed whereby demand is determined.

The assessed filed appeal before CIT against AO order and give explanations as asked by learned CIT. however CIT dismissed the appeal and the assessed has now come before learned ITAT.

The assessed is in business for past many years of supplying spare parts by touring to various states and received payments in saving account which he is maintained in PNB and SBI Bank at that time.

The assessed have received small amounts on various dates as receipts of business and withdraw the same for again purchase of goods. The learned CIT erred on the fact the assessed has received small number of payments on various dates and those deposits are duly followed by withdrawals on different dates. There is no incidence when huge sum is deposited in the bank account of the assessed. This means that assessed is actually running a business and not having any one-time receipt of cash

Further the income tax department has sent him notices for ASST YEAR 2011-2012 and ASST YEAR 2012-2013 also on the same facts on the basis of AIR Returns whereby same small amounts is received on different dates in same banks as refereed above followed by withdrawal on different dates and there is no incidence that any huge sum is deposit and huge withdrawal made. The assessed has responded the various notices and income is determined u/s 44AF and received the NIL demand orders as assessed income is below taxable limit. The copy of ASSESSMENT ORDER as issued by dept on same facts as in said year is attached here for your reference

This is again going to indicate that the assessed is actually doing the business has received the very much as similar amount on different dates followed by subsequent withdrawals which can be verified from bank statements also.

The learned CIT has never asked for sale bills, purchase bills and other ledgers such as bank ledger cash ledger and whatever information as asked by CIT as to list of debtors to whom sale is made is provided. The proper opportunity is not given by learned CIT to explain the case and the case is

not properly assessed as whatever limited information as asked to determine the order is not sufficient as to explain the facts of the case. The assess see has provided all details as asked by CIT as regards details of persons to whom sales are made. Since the assessment has done after 7-8 years many dealers have changed the locations and some have closed the business and some parties have never read the letters of income tax. The confirmation details are never asked by CIT.

The reasoning given by CIT as to general practice of business to receive payments in odd figures is also not justifiable and acceptable.

The assessed has also some cash sales apart from as shown in account which is never provided to give return as usually asked by AO U/s 142 of 148.

Thus, in the light of the same the learned ITAT is requested to give proper opportunity and restore the case Bach to AO so that proper opportunity is provided to assessed in the light of principles of natural justice and proper assessment can be done”

8. I find that the learned CIT(Appeals) did not consider the evidence filed by the assessee. It is the submission of the assessee that the assessee had benefit of section 44AF of the Act and the profit was required to be assessee accordingly. Looking to the totality of the facts and circumstances, I find that the assessee was not given adequate opportunity to effectively explain his case. Therefore, the impugned order is set aside and the assessment is restored to the file of the Assessing Officer for making the assessment afresh after giving adequate opportunity to the assessee in accordance with law. The assessee would not seek

any adjournment without any compelling reasons. The grounds raised in this appeal are allowed for statistical purposes.

9. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in open court on 22.02.2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated: 22/02/2022.

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI